

Title 210 -- NEBRASKA DEPARTMENT OF INSURANCE

Chapter 65 -- CREDIT FOR REINSURANCE

001. Authority This rule is adopted and promulgated by the Director of Insurance of the State of Nebraska pursuant to *Neb. Rev. Stat.* § 44-416 and § 44-417.

002. Purpose The purpose of this rule is to set forth rules and procedure requirements ~~which~~ that the Director deems necessary to carry out the provisions of *Neb. Rev. Stat.* § 44-416 and § 44-417.

003. Severability If any section of this rule, or the applicability thereof to any person or circumstance, is held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

004. Credit for reinsurance - reinsurer licensed in this state Pursuant to § 44-416.01(2), the Director shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers ~~which~~ that were licensed in this state as of the date of the ceding insurer's statutory financial statement.

005. Credit for reinsurance - reinsurer licensed and domiciled in another state

(005.01) Pursuant to § 44-416.01(3), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer ~~which~~ that, as of the date of the ceding insurer's statutory financial statement,:

(005.01(A)) Is licensed and domiciled in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state ~~which~~ that employs standards regarding credit for reinsurance substantially similar to those applicable under § 44-416 and § 44-417 and this regulation;

(005.01(B)) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(005.01(C)) Files a properly executed Form AR-1 with the Director as evidence of its submission to this state's authority to examine its books and records.

(005.02) The provision of this section relating to surplus as regards policy holders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system except that such insurers shall conform to the same standards of solvency ~~which~~ that would be required if such insurers were licensed in this state, including the capital and surplus requirements of § 44-214 or § 44-219. As used in this section, "substantially similar standards" means credit for

reinsurance standards ~~which~~ that the Director determines to be equal to or ~~exceed~~ in excess of the standards of § 44-416, § 44-417, and this regulation.

006. Credit for reinsurance - reinsurers maintaining trust funds

(006.01) Pursuant to § 44-416.01(4), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer ~~which~~ that, as of the date of the ceding insurer's statutory financial statement, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in § 44-416(1), for the payment of the valid claims of its United States domiciled policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the Director substantially the same information as that required to be reported on the National Association of Insurance Commissioner's annual statement form by licensed insurers, to enable the Director to determine the sufficiency of the trust fund.

(006.02) The following requirements apply to the following categories of assuming insurer:

(006.02(A)) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liability attributable to ~~business written in the United States~~, reinsurance ceded by United States domiciled insurers and, in addition, a trustee's surplus of not less than \$20,000,000.

(006.02(B)) The trust fund for a group that includes incorporated and individual unincorporated underwriters shall consist of:

(006.02(B)(1)) For insurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's aggregate several liabilities attributable to business written in the ceded by United States domiciled ceding insurers to any member of the group;

(006.02(B)(2)) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed on or after that date, notwithstanding the other provisions of § 44-416 and 44-417, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and, in addition, the group shall maintain

(006.02(B)(3)) A trustee's surplus of which \$100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of the account.

(006.02(C)) The incorporated members of ~~such~~ a group that includes incorporated and individual unincorporated underwriters shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(006.02(D)) Within ninety (90) days after the financial statement is due to be filed with the group's domiciliary regulator, ~~The group of incorporated and individual unincorporated underwriters~~ shall make available to the Director annual certifications of each underwriter member's solvency by the group's domiciliary regulator ~~and its~~ or, if certification is unavailable, a financial statement prepared by the independent public accountants of ~~the solvency of~~ each underwriter member of the group.

~~(00B.02(C))~~ (006.02(E)) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholder surplus of \$10,000,000,000 calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, and which has continuously transacted an insurance business outside the United States for at least three (3) years, shall consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group. In addition, the group shall maintain a joint trusted surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. Within ninety (90) days after the financial statement is due to be filed with the group's domiciliary regulator, ~~The group~~ shall make available to the Director annual certifications of each underwriter member's solvency by the members' domiciliary regulators and a financial statement prepared by the members' independent public accountants of the solvency of each underwriter member of the group.

(006.03) The trust shall be established in a form approved by the ~~Director and complying with § 44-416.01(4) and this section~~ insurance regulator of the state where the trust is domiciled or by the insurance regulator of another state who, pursuant to the terms of the trust, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments shall also be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(006.03(A)) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.

(006.03(B)) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns, and successors in interest.

(006.03(C)) The trust and the assuming insurer shall be subject to examination as determined by the Director.

(006.03(D)) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust.

(006.03(E)) No later than February 28 of each year the trustees of the trust shall report to the Director in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

~~(006.03(F)) No amendment to the trust shall be effective unless reviewed and approved in advance by the Director.~~

(006.04) For purposes of this regulation, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers that are not otherwise secured by acceptable means and shall include:

(006.04(A)) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

(006.04(A)(1)) Losses and allocated loss expenses paid by the ceding insurer, and recoverable from the assuming insurer;

(006.04(A)(2)) Reserves for losses reported and outstanding;

(006.04(A)(3)) Reserves for losses incurred but not reported;

(006.04(A)(4)) Reserves for allocated loss expenses; and

(006.04(A)(5)) Unearned premiums.

(006.04(B)) For business ceded by domestic insurers authorized to write life, health, and annuity insurance:

(006.04(B)(1)) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(006.04(B)(2)) Aggregate reserves for accident and health policies;

(006.04(B)(3)) Deposit funds and other liabilities without life or disability contingencies; and

(006.04(B)(4)) Liabilities for policy and contract claims.

007. Credit for reinsurance required by law

(007.01) Pursuant to § 44-416.01(5), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 44-416.01(2), (3), or (4), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, “jurisdiction” means any state, district, or territory of the United States and any lawful national government.

(007.02) Pursuant to § 44-416.01(7), if the assuming insurer does not meet the requirements of §§ 44-416.01(2) or (3), the credit for reinsurance permitted by § 44-416.01(4) shall not be allowed unless the assuming insurer agrees in the trust instrument to the following conditions:

(007.02(A)) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by § 44-416.01(4), or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, or liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the insurance regulator with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the insurance regulator with regulatory oversight all of the assets of the trust fund;

(007.02(B)) The assets shall be distributed by, and claims shall be filed with and valued by, the insurance regulator with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of the domestic insurance companies;

(007.02(C)) If the insurance regulator with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the insurance regulator with regulatory oversight shall return the assets, or part thereof, to the trustee for distribution in accordance with the trust instrument; and

(007.02(D)) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection.

008. Reduction from liability for reinsurance ceded to an unauthorized assuming insurer

(008.01) Pursuant to § 44-416.03, the Director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 44-416.01 in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in § 44-416(1). This security may be in the form of any of the following:

(008.01(A)) Cash.

(008.01(B)) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

(008.01(C)) Clean, irrevocable, unconditional, and “evergreen” letters of credit issued or confirmed by a qualified United States institution, as defined in § 44-416(2), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

(008.01(D)) Any other form of security acceptable to the Director.

(008.02) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to Section 008.01 shall be allowed only when the requirements of Sections 009, 010, and 011 of this rule are met.

009. Trust agreements qualified under section 008

(009.01) As used in this section:

(009.01(A)) “Beneficiary” means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the

named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(009.01(B)) “Grantor” means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(009.01(C)) “Obligations,” as used in 009.02(K), means:

(009.01(C)(1)) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(009.01(C)(2)) Reserves for reinsured losses reported and outstanding;

(009.01(C)(3)) Reserves for reinsured losses incurred but not reported; and

(009.01(C)(4)) Reserveds for allocated reinsured loss expenses and unearned premiums.

(009.02) Required conditions.

(009.02(A)) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee, which shall be a qualified United States financial institution as defined in § 44-416.

(009.02(B)) The trust agreement shall create a trust account into which assets shall be deposited.

(009.02(C)) All assets in the trust account shall be held by the trustee at the trustee’s office in the United States, except that a bank may apply for the Director’s permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this section. If the Director approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in 009.02(D)(1) must also be presentable, as a matter of legal right, at the trustee’s principal office in the United States.

(009.02(D)) The trust agreement shall provide that:

(009.02(D)(1)) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(009.02(D)(2)) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(009.02(D)(3)) It is not subject to any conditions or qualifications outside of the trust agreement; and

(009.02(D)(4)) It shall not contain reference to any other agreements or documents except as provided for under 009.02(K).

(009.02(E)) The trust agreement shall be established for the sole benefit of the beneficiary.

(009.02(F)) The trust agreement shall require the trustee to:

(009.02(F)(1)) Receive assets and hold all assets in a safe place;

(009.02(F)(2)) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(009.02(F)(3)) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(009.02(F)(4)) Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

(009.02(F)(5)) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(009.02(F)(6)) Allow no substitutions or withdrawals of assets from the trust account, except on written instruction from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(009.02(G)) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to the termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(009.02(H)) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(009.02(I)) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustees.

(009.02(J)) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith.

(009.02(K)) Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this regulation, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

(009.02(K)(1)) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(009.02(K)(2)) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(009.02(K)(3)) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in § 44-416 apart from its general assets, in trust for such uses and purposes described in 009.02(K)(1) and 009.02(K)(2) above as may remain executory after such withdrawal and for any period after the termination date.

(009.02(L)) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by 009.04(A)(2) of this section, so long as these required conditions are included in the trust agreement.

(009.03) Permitted conditions.

(009.03(A)) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days

after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(009.03(B)) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(009.03(C)) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restriction in 009.04(A)(1).

(009.03(D)) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(009.03(E)) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(009.04) ~~Additional conditions~~ Optional provisions applicable to a reinsurance agreements that is entered into in conjunction with a trust agreement and the establishment of a trust account.

(009.04(A)) A reinsurance agreement, ~~which is entered into in conjunction with a trust agreement and the establishment of a trust account,~~ under 009.04 may contain provisions that:

(009.04(A)(1)) Require the assuming insurer to enter into a trust agreement and to establish a trust amount for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(009.04(A)(2)) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only

of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by § 44-5123 through § 44-5133 and § 44-5137 through § 44-5141, of the Insurance Code, or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provision in the reinsurance agreement;

(009.04(A)(3)) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(009.04(A)(4)) Require that all settlements of accounts between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(009.04(A)(5)) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(009.04(A)(5)(i)) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellation of such policies;

(009.04(A)(5)(ii)) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(009.04(A)(5)(iii)) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded,

from the ceding insurer's liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and

(009.04(A)(5)(iv)) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(009.04(B)) ~~The~~A reinsurance agreement under 009.04 may also contain provisions that:

(009.04(B)(1)) Give the assuming insurer the right to seek approval from the ceding insurer, which approval shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(009.04(B)(1)(i)) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

(009.04(B)(1)(ii)) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

(009.04(B)(2)) Provide for:

(009.04(B)(2)(i)) The return of any amount withdrawn in excess of the actual amounts required for 009.04(A)(5)(i), (ii), and (iii), or in the case of 009.04(5)(iv), any amounts that are subsequently determined not to be due; and

(009.04(B)(2)(ii)) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to 009.04(A)(5)(iii).

(009.04(B)(3)) Permit the award by any arbitration panel or court of competent jurisdiction of:

(009.04(B)(3)(i)) Interest at a rate different from that provided in 009.04(B)(2)(ii),

(009.04(B)(3)(ii)) Court of arbitration costs,

(009.04(B)(3)(iii)) Attorney's fees, and

(009.04(B)(3)(iv)) Any other reasonable expenses.

(009.04(C)) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(009.04(D)) Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to December 31, 1995, will continue to be acceptable until December 31, 1995, after which time the agreements will have to be in full compliance with this regulation for the trust agreement to be acceptable.

(009.04(E)) The failure of any trust agreement to specifically identify the beneficiary as defined in this section shall not be construed to affect any actions or rights ~~which~~ that the Director may take or possess pursuant to the provisions of the laws of this state.

010. Letters of credit qualified under section 008

(010.01) The letter of credit must be clean, irrevocable, and unconditional, and issued or confirmed by a qualified United States financial institution as defined in § 44-416. The letter of credit shall contain an issue date and an expiration ~~date of expiration~~, and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in 010.09(A) below. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(010.02) The heading of the letter of credit may include a boxed section ~~which~~ that contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(010.03) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(010.04) The term of the letter of credit shall be for at least one year and shall contain an “evergreen” clause ~~which~~ that prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” shall provide for a period of no less than thirty (30) days’ notice prior to expiry date or nonrenewal.

(010.05) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 or any successor publication), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(010.06) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 or any successor publication), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 or any successor publication occur.

(010.07) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to § 44-416.

(010.08) If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in 010.07, then the following additional requirements shall be met:

(010.08(A)) The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

(010.08(B)) The “evergreen clause” shall provide for thirty (30) days’ notice prior to expiry date or nonrenewal.

(010.09) Reinsurance agreement provisions.

(010.09(A)) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions ~~which~~ that:

(010.09(A)(1)) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

(010.09(A)(2)) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(010.09(A)(2)(i)) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(010.09(A)(2)(ii)) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

(010.09(A)(2)(iii)) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred, and unearned premium reserves); and

(010.09(A)(2)(iv)) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(010.09(A)(3)) All of the foregoing provisions of 010.09(A) should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(010.09(B)) Nothing contained in 010.09(A) shall preclude the ceding insurer and assuming insurer from providing for:

(010.09(B)(1)) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to 010.09(A)(2)(iii); ~~and/or~~

(010.09(B)(2)) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of 010.09(A)(2)(iv), any amounts that are subsequently determined not to be due.

(010.09(C)) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of 010.09(A)(2), require that the parties enter

into a "Trust Agreement," which may be incorporated into the reinsurance agreement or be a separate document.

(010.10) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement ~~which~~ that the letter of credit was intended to secure.

011. Other security A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

012. Reinsurance contract Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of this regulation or otherwise in compliance with § 44-416 after the adoption of this regulation unless the reinsurance agreement:

(012.01) Includes a proper insolvency clause pursuant to § 44-417 of the Insurance Code; and

(012.02) Includes a provision pursuant to § 44-417 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel.

013. Contracts affected All new and renewal reinsurance transactions entered into after December 31, 1995, shall conform to the requirements of this regulation if credit is to be given to the ceding insurer for such reinsurance.